

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2150 OF 2005

M/s.Rajendra Mechanical Industries)
Ltd., an existing company within the)
meaning of Companies Act, 1956, having)
its registered office at Plot No.11,)
Cama Industrial Estate, Goregaon (E),)
Mumbai - 400 063.)..Petitioner.

V/s.

1. The Maharashtra Sales Tax)
Tribunal, 7th Floor, Vikrikar)
Bhavan, Mazgaon, Mumbai - 400 010.)
)
2. The State of Maharashtra,)
Mantralay, Mumbai - 400 032.)
)
- 3) The Commissioner of Sales Tax,)
Maharashtra State, 8th Floor,)
Vikrikar Bhavan, Mazgaon,)
Mumbai - 400 010.)..Respondents.

Mr.C.B.Thakkar for petitioners.

Mr.Rajiv Chavan, A.G.P. for respondents.

CORAM : V.C.DAGA AND
J.P.DEVADHAR, JJ.

DATED : 9TH SEPTEMBER, 2005.

JUDGMENT (PER V.C.DAGA, J.)

1. Rule, returnable forthwith. Mr.Rajiv Chavan,
AGP waives service on behalf of the respondents. Heard
finally by consent of the parties.

THE FACTS

2. Petitioners had filed first appeal before the Dy.Commissioner of Sales Tax (Appeals) II, Mumbai against the order of assessment dated 11/11/1996 passed by the Assistant Commissioner of Sales Tax (Asstt) B-108 under the provisions of the Central Sales Tax Act, 1956. The petitioner was unsuccessful in the said appeal. Consequently, petitioner preferred second appeal against the above order before the Maharashtra Sales Tax Tribunal, Mumbai ('the Tribunal' for short).

3. During the pendency of the aforesaid appeal, the Government of Maharashtra issued a Government Resolution dated 26/4/1999 declared Amnesty Scheme known as "Maharashtra Rajya Karvivad Nivaran Yojana, 1999" ('MKNY Amnesty Scheme' for short).

4. The Commissioner of Sales Tax pursuant to clause 5 of the MKNY Amnesty Scheme issued Trade Circular No.12T of 1999 dated 10/5/1999 along with Circular bearing No.14-T of 1999 dated 10/6/1999. Clause (x) of the Circular dated 10/6/1999 reads as under :-

"(x) Cases pending in Appeal.

- (a) Xerox copy of the letter addressed to Appellate Authority for withdrawal of the appeal unconditionally shall be enclosed with the application form.
- (b) For availing benefit under MKNY if the appeal is withdrawn and subsequently for any reason the benefit under MKNY is not granted, the dealer can apply for restoration of appeal.

5. Petitioner to claim the benefit of MKNY Amnesty Scheme, on 26/7/1999; applied to the Maharashtra State Tribunal for withdrawal of the second appeal pending before the Tribunal and on 31/7/1999 applied for availing benefits of the Amnesty Scheme. During the pendency of this application moved on 31/7/1999 the Sales Tax Tribunal by an order passed in the second appeal allowed the petitioner to withdraw its appeal. Thus, the second appeal came to be dismissed as withdrawn. The petitioner thereafter entered into the correspondence with authorities designated under MKNY Scheme for allowing the benefits of the Amnesty Scheme and pursued the matter right upto July 2003. However, the petitioner could not get success in claiming benefits of the MKNY Amnesty Scheme. In other words, application made by the petitioner came to be rejected and the benefits of the Scheme were denied to the

petitioner, which the petitioner came to know finally in the month of July, 2003.

6. Petitioner after having known finally that he was not going to get the benefits of MKNY Amnesty Scheme applied on 5/9/2003 for restoration of the second appeal to the Sales Tax Tribunal. The Tribunal finding the application for restoration beyond the period of 30 days from the date of the order allowing withdrawal of the appeal, rejected the application for restoration vide its order dated 21/4/2005. The aforesaid order is the subject matter of the challenge in this petition filed under Article 226 of the Constitution of India.

RIVAL SUBMISSIONS

7. The learned counsel appearing for the petitioner submits that in order to have proper implementation of the MKNY Amnesty Scheme Trade Circulars were issued from time to time in exercise of powers conferred under the said Amnesty Scheme. One of the clauses of the Trade Circular as extracted hereinabove, specifically permits the applicant to apply for restoration of the appeal in the event benefits of the Scheme are denied to him. In that view of the matter, the learned

counsel for the petitioner submits that the the State / Sales Tax department ought not to have opposed its application for restoration of appeal. In the submissions of the learned counsel for petitioner, the contentions raised by the State Government while opposing the prayer for restoration of the appeal were contrary to the declared policy of the State. He thus, submits that so far as Rule 61 of the Bombay Sales Tax Rule, 1959 is concerned, the said Rule could not have been pressed into service to defeat the prayer of the petitioner seeking to restore appeal which was withdrawn to seek benefits of the Amnesty Scheme. He further submits that appeal was never dismissed by Tribunal in default nor it was decided ex-parte, as such Rule 61 has no application. He further submits that the prayer for restoration of appeal was pursuant to the Amnesty Scheme floated by the State Government, wherein no specific time limit was prescribed, therefore, Court should only examine whether the prayer for restoration was made within a reasonable time or not. He, thus, submits that the impugned order of the Tribunal refusing to restore appeal to its file is liable to be set aside.

8. Per contra, learned A.G.P. appearing for the State (Sales Tax department) while countering the

aforesaid submissions urged that Trade Circulars issued from time to time pursuant to the powers given in the Scheme will have to be read with the Rules of 1959 in general and Rule 61 in particular in the facts and circumstances of the case. He, thus, submits that the application for restoration of the appeal not being made within a period of 30 days, the Tribunal was perfectly justified in rejecting the application for restoration. He thus prayed for rejection of this petition.

CONSIDERATION

9. Having heard the rival parties, without going into the intricacies of the legal submissions advanced, it is needless to mention that pursuant to the MKNY Amnesty Scheme, the present petitioner had withdrawn the appeal. The benefits of the scheme could not be extended to the petitioner with the result the petitioner was justified in moving an application for restoration of the appeal which was allowed to be withdrawn by the Tribunal. The Trade Circular issued did not provide for any time limit for moving the restoration application to restore the appeal. Limitation of 30 days prescribed under Rule 61 of the Bombay Sales Tax Rules, 1959 apply to cases where the appeal is dismissed or decided ex-parte on account of

the failure on the part of the appellant to appeal before the Tribunal on the appointed date and not cases where the appeal is allowed to be withdrawn for availing the benefit of the Amnesty Scheme. Under these circumstances, considering the MKNY Amnesty Scheme and the Trade Circulars issued thereunder, we do not think that the Tribunal was justified in relying upon the Rule to non suit the petitioner.

10. Even otherwise, considering the interest of justice, the prayer of the petitioner for restoration ought to have been allowed by the Tribunal. A dealer or a person like the petitioner cannot be told that under the Amnesty Scheme he will have to withdraw the appeal and on refusal to grant benefits, he will not be entitled to pursue his appeal. Assessee cannot be hit in both ways. In this view of the matter, we are of the opinion that the impugned order is unsustainable and liable to be quashed and set aside. The application for restoration which was filed by the petitioner before Tribunal is liable to be allowed. Appeal is liable to be restored to the file of the Tribunal with directions to decide it on its own merits.

11. In the result, the petition is allowed. The

impugned order dated 21/4/2005 incorporated at Exhibit-L of the petition is set aside. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)